

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

WILLIAM C. CARPENTER, JR.
JUDGE

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Date Decided: April 21, 2022

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RE: State of Delaware v. Kathleen McGuiness
ID No. 2110001942
Defendant's Motion for a Bill of Particulars

Dear Counsel:

After hearing oral arguments on April 7, 2022, the Court reserved judgment on Defendant Kathleen McGuiness's ("Defendant" or "McGuiness") Motion for a Bill of Particulars. As explained below, Defendant's Motion is **GRANTED in part** and **DENIED in part**.

On October 10, 2021, the Defendant was charged by indictment in the above captioned matter with Conflict of Interest (Count One), Felony Theft (Count Two),

Structuring: Non-Compliance With Procurement Law (Count Three), Official Misconduct (Count Four), and Act of Intimidation (Count Five).¹ Defendant was reindicted by a different Grand Jury on March 28, 2022.² The new indictment did not include any new or additional charges but extended the date range for Counts Four and Five, and included additional facts to support Count Three.³

On November 23, 2021, Defendant moved for a Bill of Particulars contending the indictment does not provide notice of the specific conduct being prosecuted and arguing the Defendant may be subject to unfair surprise at trial or subsequent prosecution for an inadequately described offense.⁴ Defendant also included that the indictment fails to plainly describe all of the essential facts of each of the alleged offenses, as required by Rule 7(c).⁵ More specifically, Defendant raised the following issues:

1. With regard to Count One, Defendant requests the identities of the alleged employees because it is unclear whether they are within the “same class or group of persons” as her daughter, as required by 29 *Del. C.* § 5805(a)(2).⁶

2. With regard to Count Two, Defendant requests the State specify the Defendant’s acts that enabled her to take, exercise control over, or obtain property belonging to the State in violation of 11 *Del. C.* § 841.⁷

¹ Def.’s Mot. for a Bill of Particulars, D.I. 27, ¶1 (Nov. 23, 2021)(hereinafter “Def.’s Mot.”).

² Re-Indictment, D.I. 54, 2110001942 (Mar. 28, 2022).

³ *Id.*

⁴ Def.’s Mot. at ¶ 4.

⁵ *Id.*

⁶ *Id.* at ¶9.

⁷ *Id.* at ¶14.

3. With regard to Count Three, Defendant requests the Court direct the State to: (a) specify how many contracts the Defendant is alleged to have entered into in violation of 29 Del. C. § 6903; and (b) specify the vendor-party in each such contract, the amount of each such contract, and the execution date of each such contract.⁸

4. With regard to Count Four, Defendant requests that this Court direct the State to specify each of the facts described in Paragraphs 10 and 15, and to further specify: (a) the nature of the personal benefit obtained by the Defendant or the harm caused to another person (an element of the offense); (b) the act or acts that constituted an unauthorized exercise of official functions, and; (c) if more than one act constituted an authorized exercise of official function, the nature of the personal benefit or harm caused to another person attributable to each act.⁹

5. With regard to Count Five, Defendant requests that this Court direct the State to specify: (a) the names of any witness who the State alleges was intending to or did give testimony at a proceeding or inquiry authorized by law; (b) the identity and specific nature of any such “proceeding or inquiry authorized by law,” and the date(s) upon which such proceeding or inquiry began; (c) the date(s) upon which the Defendant first learned that any proceeding was occurring, or would occur; (d) a concise statement of specific facts suggesting that the person or persons who are described as “any witness” meet the statutory definition of a witness as set forth in 11 Del. C. § 3531(3).¹⁰

On March 25, 2022, the State filed an opposition to Defendant’s Motion arguing that the indictment goes beyond the requirements under Delaware law, and sufficiently provides the precise manner in which the crimes alleged were committed.¹¹

⁸ *Id.* at ¶17.

⁹ *Id.* at ¶21.

¹⁰ *Id.* at ¶24.

¹¹ State’s Resp. to the Def.’s Mot. for a Bill of Particulars, D.I. 48, ¶9 (Mar. 25, 2022)(hereinafter “State’s Resp.”).

Pursuant to Delaware Superior Court Rule 7 of Criminal Procedure, an indictment “shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.”¹² The purpose of an indictment is two-fold: (1) it must put the defendant on notice of what she is to defend; and (2) it must provide a shield against subsequent prosecution for the same offense.¹³ An indictment is deemed sufficient if it is drawn with such particularity as to permit the defendant to reasonably know the elements or essential facts of the charges against her, so that she may have a reasonable opportunity to prepare a defense.¹⁴

Likewise, a bill of particulars is intended to supplement the information set forth in the indictment, and in so doing, it both “protect[s] the defendant against surprise during the trial, and [precludes] subsequent prosecution for an inadequately described offense.”¹⁵ In considering a bill of particulars, a court must balance the need to avoid compelling the prosecution to freeze its case in advance of trial against the need to protect a defendant from unfair surprise.¹⁶ The grant or denial of a defendant’s motion for a bill of particulars is within the sound discretion of the trial court.¹⁷

¹² Del. Super. Ct. R. 7(c)(1).

¹³ *State v. Banther*, 1998 WL 283476, at *1 (Del. Super. Ct. Apr. 2, 1998).

¹⁴ *Id.*

¹⁵ *Luttrell v. State*, 97 A.3d 70, 76 (Del. July 28, 2014).

¹⁶ *Id.*

¹⁷ *Id.*

Based on the above standards, the following decisions are made relating to the Defendant's Bill of Particulars request:

As to Count One, the State is to respond to Paragraph 12(a) of the Bill of Particulars¹⁸ and provide the names of the employees identified as Employee 1, 2, and 3 in the indictment. No further response is required as to Count One.

As to Count Two, the State is to respond to Paragraph 14 of the Bill of Particulars¹⁹ by identifying with particularity the property of the State of Delaware that the Defendant took, obtained or exercised control over.

As to Count Three, the State has indicated it has provided the information requested in discovery as to My Campaign Group whose contract was allegedly structured in violation of Section 6903 of Title 29. The Court finds the indictment is sufficiently plead as to this Count as it relates to the My Campaign Group contract. To the extent the State is relying on contracts other than that to My Campaign Group, the information requested in Paragraph 17 of the Bill of Particulars²⁰ should be provided to the Defendant.

¹⁸ Def.'s Mot. at ¶ 12(a), p. 7.

¹⁹ *Id.* at ¶ 14, p. 8.

²⁰ *Id.* at ¶ 17, p. 9-10.

As to Count Four, no further response is required beyond that provided in the State's Response on March 25, 2022, and the discovery provided.

As to Count Five, the State is to provide to the Defendant the names of the witnesses that the Defendant is alleged to have prevented, dissuaded, or attempted to prevent from attending any trial proceeding or inquiry authorized by law. In addition, if the State is alleging that the Defendant's conduct relates to a proceeding other than the criminal investigation that led to her indictment, it is to identify that proceeding and respond to Paragraphs 24(a–c) of the Defendant's Bill of Particulars.²¹ Finally, if the State alleges that the Defendant was aware of an inquiry authorized by law before the Grand Jury subpoena on September 11, 2021, then the specific date and event is to be identified to the Defendant.

Beyond that set forth above, the Court does not find any additional response to either the initially filed Bill of Particulars or the subsequent supplement is warranted. Not only does the indictment sufficiently inform the Defendant of the charges against her, but she has been provided with a significant amount of material information from the State during discovery. That information satisfies the additional deficiencies raised by Defendant and satisfactorily puts her on notice of the alleged conduct that is the subject of this prosecution. Additionally, it appears

²¹ *Id.* at ¶ 24(a–c), p. 13.

the remaining information sought goes to the State's theory of the case and the precise manner in which the crime is alleged to have been committed, which need not be disclosed before trial.²² Therefore, Defendant's Motion for a Bill of Particulars is **GRANTED in part** and **DENIED in part**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

²² *State v. Phillips*, 2004 WL 909557, at *4 (Del. Super. Ct. Apr. 21, 2004); Id. (citing *U.S. v. Andrews*, 381 F.2d 377, 377-78 (2d. Cir. 1967)).